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NOV 04 2004

In re Application of
Carl Hewitt, et al.
Application No. 09/777,390
Filed: February 5, 2001
For: **INTERNET-BASED ENHANCED
RADIO**

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600
DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed August 3, 2004, which is treated as Petition to Withdraw the Holding of Abandonment pursuant to 37 C.F.R. §1.181. No fee is required.

The petition is **GRANTED**.

The application was abandoned for failure to respond in a timely and effective manner to the non-final Office action mailed October 24, 2003. A Notice of Abandonment was mailed on July 27, 2004.

Petitioner asserts that a proper response was timely filed on January 26, 2004. In support of the petition, Petitioner has submitted, a copy of Applicant's reply and a date-stamped post card receipt which itemized an amendment transmittal, a certificate of mailing, 13 pages of an amendment and deposit account authorization, evidencing receipt of the response within the United States Patent & Trademark Office on February 2, 2004. The transmittal letter contains a certificate of mailing and references 13 pages of amendment/response.

The original correspondence filed was not matched with the application file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the U.S.PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely filed in the Patent and Trademark Office but not matched with the application file.

In view of the above stated reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The application file will be forwarded to the Technology Center's technical support staff for entering the copy of the response submitted with the petition. From there, the file will be forwarded to the examiner for further examination in due course.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications